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IN THE

Supreme Court of the United States

October Term, 1959

No. 944 91

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

—v.—

ROY FRUEHAUF, FRUEHAUF TRAILER CO., BURGE SEYMOUR, ASSOCIATED TRANSPORT, INC., BROWN EQUIPMENT AND MANUFACTURING CO., and DAVE BECK,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO AFFIRM

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IN THE

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October Term, 1959

No. 941.

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

—v.—

ROY FRUEHAUF, FRUEHAUF TRAILER CO., BURGE SEYMOUR, ASSOCIATED TRANSPORT, INC., BROWN EQUIPMENT AND MANUFACTURING CO., and DAVE BECK,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO AFFIRM

Appellees, Roy Fruehauf, Burge Seymour, Associated Transport, Inc. and Brown Equipment & Manufacturing Co., pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment of the District Court be affirmed on the ground that the question presented is so unsubstantial as not to warrant further argument.

Opinion Below

The ruling of the District Court (R. 80-81; Appendix A of Jurisdictional Statement), which dismissed the indictment herein, has not been reported.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Jurisdictional Statement.

Question Presented

Section 302 of the Labor Management Relations Act of 1947 made it unlawful for an employer to "pay or deliver" to a representative of any of his employees in an industry affecting interstate commerce, or for such representative to "receive or accept" from the employer, "any money or other thing of value." The question presented is whether a loan of money, evidenced by a promissory note and repaid with interest, comes within the foregoing prohibitions.

Statutes Involved

The pertinent provisions of Section 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, 29 U. S. C. A. 186, and Section 505 of the Labor Management Report and Disclosure Act of 1959, 73 Stat. 537, which amended said Section 302, are set forth in the Jurisdictional Statement at pages 2-3.

Statement of the Case

This is an appeal from the dismissal of an indictment under Section 302 of the Labor Management Relations Act of 1947 as it stood prior to amendment in September 1959.

The two-count indictment, filed on June 17, 1959 in the United States District Court for the Southern District of New York, charged that on or about June 21, 1954, defendants Fruehauf, Fruehauf Trailer Co., Seymour, Associated Transport, Inc. and Brown Equipment & Manufacturing Co., in violation of Section 302(a) of the Act, did "pay and

deliver and agreed to pay and deliver to Dave Beck * * * a thing of value, to wit, money in the amount of $200,000" (R. 1, 5; Count 1) and that defendant Beck did "receive and accept" the money in violation of Section 302(b) of the Act (R. 1, 5-6; Count 2).

Subsequently, appellant admitted that the transaction involved was a loan, and that the loan was repaid in full, with interest (R. 13-14).

On February 18, 1960, all the defendants orally moved to dismiss the complaint. After argument, the District Court (Sugarman, J.) dismissed the indictment on the ground that Section 302, as it existed at the time of the offenses charged, did not proscribe loans of money (R. 80-81; Appendix A of Jurisdictional Statement).

Since, as the Jurisdictional Statement (p. 6) sets forth, "the statute has now been amended specifically to cover loans," the question here involved cannot possibly arise in any future transaction. The appellant concedes that there is only "one such pending case at present," and its reference to the "considerable publicity" allegedly given to the instant case (pp. 5-6) is irrelevant. Nor would the interpretation of the bribery statutes cited by the appellant (pp. 6-7) be in any way affected hereby, in view of (1) the substantial differences in their language, and (2) their requirement of a specific corrupt intent (except for 18 U. S. C. A. 211, which is explicitly limited to a "present").

In the interest of clarity, we have separated into two Points (although they lead to one conclusion) our arguments that (1) the statute, as it existed at the time of the transaction in question, did not prohibit a loan, and (2) the subsequent amendment thereto, adding the word "lend," clearly confirmed Congress' understanding that a loan had not previously been prohibited.

POINT I

The District Court's construction of Section 302(a) as excluding loans falls squarely within the principle that where a statute, creating a new crime merely *malum prohibitum*, "admits of a double meaning," "all reasonable doubts must operate in favor of the accused," who was entitled to "an unequivocal warning" of the Acts rendered criminal.

The words "pay or deliver any money or other thing of value" do not fairly connote the making of a loan. First, Webster's New International Dictionary (in substantially the same laguage as Funk & Wagnall and all of the other dictionaries) defines "pay" as:

> "2. To satisfy (one) for service rendered, property delivered, etc.; to discharge one's obligation to; to make due return to; to compensate; remunerate; * * * 3. To give in return for services, purchases, etc., in satisfaction of a promise, a moral debt, * * * or in retribution (that which is due) * * * 4. To make compensation or retaliation for * * *; to make up for * * *; to recompense * * * 5. To give, offer or make, freely or as fitting * * *."

It defines "deliver" as (*inter alia*) "To give or transfer; to yield possession or control of; to part with; to make or hand over." The synonym given for "deliver" is "release," and none of the many synonyms given for "pay" in any dictionary includes "lend."

It is universally recognized that "the word 'pay' indicates the discharge of an obligation rather than an investment of money." (*Hopson* v. *The Aetna Axle & Spring Co.*, 50 Conn. 597, 601). A loan, like an investment, is "made," not "paid."

Certainly it should not be presumed that Congress used these simple words inaccurately or ambiguously. As this

Court held in *Bell* v. *United States*, 349 U. S. 81, 83 (1955, Frankfurter, J.):

> "About only one aspect of the problem can one be dogmatic. When Congress has the will it has no difficulty in expressing it—when it has the will, that is, of defining what it desires to make the unit of prosecution and, more particularly, to make each stick in a faggot a single criminal unit."

The only decision prior to the instant one involving—although in a different context—the question whether a loan was a "payment" within the meaning of Section 302(c), is *United Garment Workers of America* v. *Jacob Reed's Sons*, 83 F. Supp. 49, 52 (E. D. Pa., 1949), which held:

> "Loans from trust funds to members would not be payments to members. The term 'payment' used in this section does not mean a loan. It is rather a settlement of a lawful claim which the member has against the fund * * *. Such payments are to be distinguished from loans. * * *"

The mere assertion that money loaned is a "thing of value" is irrelevant; the point is that the verbs "pay" and "deliver" did not include "lend." (*Semble*, *Western Union* v. *Lenroot*, 323 U. S. 490, 505-6, 1945).

Any doubt is resolved by the canons of construction applicable to criminal statutes. It is elementary that: "'In the construction of a penal statute, all reasonable doubts concerning its meaning ought to operate in favor of the accused. Harrison v. Vose, 9 How. 372, 50 U. S. 372, 378'" (*North American Van Lines* v. *United States*, 243 F. 2d 693, 696, C. A. 6, 1957, citing, *inter alia*, *United States* v. *Resnick*, 299 U. S. 207 and *Federal Communications Commission* v. *American Broadcasting Co.*, 347 U. S. 284).

McBoyle v. *United States*, 283 U. S. 25 (1931, Holmes, J.) held that an airplane was not a "motor vehicle * * * or

any other self-propelled vehicle not designed for running on rails," within the meaning of a statute penalizing the transportation of stolen vehicles. In unanimously reversing a judgment of conviction, the Court indicated that even in the case of "a criminal [who is not likely carefully to] consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given * * * in language that the common world will understand" (p. 27). It further decided that "the statute should not be extended to aircraft simply because it may seem to us that a similar policy applies" (*ibid.*). How much more strongly do these principles apply to the appellant's attempt to extend what it surmises (p. 7) to have been "the purpose of the Act" to these defendants, who would certainly not have made the loan if they had been fairly notified, or had even suspected, that such conduct was criminal.

Prior to the enactment of Section 302(a), it was not a crime for an employer to pay or deliver any money or other thing of value to a representative of his employees, and the crime which it created was solely *malum prohibitum* (*United States* v. *Ryan*, 350 U. S. 299, 305; *Brennan* v. United States, 240 F. 2d 253 [C. A. 8, 1957], cert. den. 353 U. S. 931 [1957]; *Korholz* v. *United States*, 269 F. 2d 897 [C. A. 10, 1959], cert. den. 366 U. S. 929 [1960]). Consequently, that statute will be construed in accordance with the requirement that it give the employer a clear and unequivocal warning, in language which the ordinary layman will understand, of precisely what acts are rendered criminal and will result in the deprivation of his liberty or property and his reputation.

As this Court succinctly held in *Connally* v. *General Construction Co.*, 269 U. S. 385, 391, 393 (1926):

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will

render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. • • •

"'The dividing line between what is lawful and unlawful can not be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. • • • Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning' • • •"

Even if Section 302(a) does not, as we contend, clearly exclude loans, unquestionably it does, at best, "admit of a double meaning," in which "the dividing line between what is lawful and unlawful" is not clear. Certainly:

> "It is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite. We should not derive criminal outlawry from some ambiguous implication." (*United States* v. *Universal C. I. T. Credit Corp.*, 344 U. S. 218, 222—1952)

Among the numerous other authorities to the same effect are: *United States* v. *McNinch*, 356 U. S. 595; *Iselin* v. *United States*, 270 U. S. 245; *Bell* v. *United States*, 349 U. S. 81 (*supra*); *Hall*, "*Strict or Liberal Construction of Penal Statutes*," 48 Harv. L. Rev. 748, 765-6, and cases cited.

Had Congress intended to proscribe loans, it could easily, and should, have expressly done so—as it did twelve years later. Thus, when it defined the terms "contribution" and "expenditure," within the restrictive sections of Chapter 29 of Title 18 pertaining to "Elections and Political Activities," Congress was not content with the words "gift" and "payment," but expressly included the word "loan" in both definitions (18 U. S. C. A., Sec.

591). Significantly, both definitions also contained, as the object of those verbs, the phrase—virtually identical with that in the instant statute—"money, or anything of value" (*ibid.*).

Similarly, when Congress, in the Federal Corrupt Practices Act (Title 2, Ch. 8), prohibited certain election contributions by national banks and other federal corporations, it expressly defined the term "contribution" to include a "loan," as well as a "gift." Here again, Congress used the same phrase "money, or anything of value" (Sec. 241, subdivisions d and e).

When Congress proscribed a loan by a bank employee to a bank examiner, it did not use the verbs "pay" or "deliver" to preface the word "loan," but instead wrote "makes or grants any loan" (18 U. S. C. A., Sec. 217). The crime defined in that statute was, like the instant one, *malum prohibitum* and, when Congress enacted it in 1948, it expressly included the word "loan." This renders all the more significant Congress' omission of that word from Section 302 in 1947 and its failure to add it until 1959.

The appellant's invocation of what it describes as "the broad [actually, vague] language of Section 302" (p. 8) flies in the teeth of the decisions above cited, in all of which the language was no less "broad" and the Government also contended that the underlying policy of Congress was in jeopardy. As this Court held in *United States* v. *Cardiff*, 344 U. S. 174 (1952, Douglas, J.):

> "The department of Justice urges * * * that that construction is needed if the Act is to have real sanctions and if the benign purposes of the Act are to be realized." (p. 175)
>
> * * *
>
> "The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited.

> Words which are vague and fluid (cf. United States v. L. Cohen Grocery Co., 255 U. S. 81) may be as much of a trap for the innocent as the ancient laws of Caligula." (p. 176)

Malatkofski v. *United States*, 179 F. 2d 905 (Jurisdictional Statement, p. 7) is inapplicable here on at least five grounds: (1) the defendant "conceded that under the statute the crime of bribery" had been established (p. 917), so that no question of statutory interpretation was in any way involved; (2) the verbs used in the statute there were broader than the instant ones (p. 908); (3) the crime defined by the statute in that case was not *malum prohibitum* but *malum in se* and required specific intent, so that the doctrine of fair warning was not controlling (*United States* v. *Dennis*, 183 F. 2d 201, 215, aff'd 341 U. S. 494); (4) the Court expressly held that, because of the illegality demonstrated, the transaction was not an enforceable "loan" at all (p. 919); and (5) the jury evidently "found that the money was paid over without any expectation of return" (*ibid.*).

This Court's language in *United States* v. *Ryan*, 350 U. S. 299, is quoted out of context (Jurisdictional Statement, pp. 7-8). The Court merely decided that "the president and principal negotiator of a labor union [who had received several outright and egregious gifts from the employer was] a 'representative' of employees within the meaning of § 302(b)" (p. 300). It held that its interpretation of those words was supported by "their literal meaning" (p. 302), as well as the "legislative history," and furthermore, that a contrary interpretation would "reduce the legislation to a practical nullity" (p. 306). None of these considerations applies here.

Appellant's characterizations (p. 8) of the Congressional debates which preceded the enactment of the original Section 302(a) are misleading. Those debates pertained to

the regulation of employer contributions to union welfare funds—which purpose, as Judge Hand acknowledged in the *Ryan* case (225 F. 2d at p. 426), was "particularly present in the mind of Congress at the time." There is not, and has not been, the slightest intimation that loans were "in the mind of Congress" or, *a fortiori*, in its statutory expression.

It might also be observed that, subsequently to this Court's decision in *United States* v. *Ryan, supra,* Section 302(a) was given a restrictive interpretation in *Arroyo* v. *United States,* 359 U. S. 419 (1959) and *Ventimiglia* v. *United States,* 242 F. 2d 620 (C. A. 4, 1957).

In *United States* v. *Golden,* Cr. No. 32479, N. D. N. Y. (Jurisdictional Statement, p. 6, ftn.), the court actually acknowledged in its memorandum-decision (next to last paragraph) "that the word 'loan' does not mean 'to pay' as those words appear in the statute." It held that the gratuitous delivery of the tugboats was, under the particular facts there, merely "a device to circumvent the statute" —*i.e.,* a cloaked gift (see Brief of the United States, p. 5).

POINT II

The 1959 amendment of Section 302(a), by expressly adding the word "lend" to the Acts proscribed, evidences Congress' own understanding that the statutory prohibition had not theretofore encompassed a loan.

The history of this amendment clearly indicates that the word "lend" was intended to close a "loophole."

While it is clear from the foregoing discussion that Section 302, as it stood at the time of the offenses charged, did not cover loans, any doubt which might have existed

has been laid to rest by the 1959 amendment of this section, which added, *inter alia*, the word "lend" to the prohibited acts.

The Act, as amended, reads in pertinent part as follows:

> "Section 302(a). It shall be unlawful for any employer or any person who acts as a labor relations expert, adviser or consultant to an employer to pay, *lend*, or deliver, or agree to pay, *lend*, or deliver, any money or other thing of value * * *." (emphasis supplied)

The Congressional proceedings which preceded and accompanied the amendment of Section 302 in 1959 establish that Congress recognized that the 1947 Act did not cover loans, and that the prohibition thereof was one of the express purposes of the amendment.

Indeed, the actual author of the amendment, Senator Kennedy, stated at the 1957 hearings of the McClellan Committee (Senate Select Committee on Improper Activities in the Labor or Management Field), which resulted in the amendment, that the very acts for which these defendants have been indicted were not a violation of existing law. Senator Kennedy said, after summarizing the very transaction here involved:

> "While there is no law against it, I think the committee should take cognizance of the attitude that they took before this committee and recognize that they have a responsibility as well as rights in this matter." (Hearings before the Senate Select Committee on Improper Activities in the Labor or Management Field, 85th Cong., 2nd Sess., 2402)

In the course of the Congressional hearings on the amendment, the statements of various legislators and experts made it clear that the amendment added a prohibition against loans to the statute and thus closed what was referred to as an existing "loophole."

Senator Goldwater, a member of both the McClellan Committee and the Senate Labor and Public Welfare Committee, stated in testimony before the Joint Sub-Committee of the House Education and Labor Committee:

> "The Taft-Hartley Act prohibits certain types of payments by employers to labor unions or their agents as tending to corrupt or wrongfully influence them. Following this lead, the bill *adds* a prohibition on any loans as well." (4 Hearings before a Joint Sub-Committee of the Committee on Education and Labor, 86th Cong., 1st Sess., on H. R. 3450, 1604, 1627; emphasis supplied)

The President of the A.F. of L.-C.I.O., George Meany, maintained the identical view before the House Labor Committee. He stated:

> "Both of these bills contain, in Section 107, provisions restricting loans from unions to their officers or employees, and barring loans from employers to officers or employees of unions representing the particular employer's employees. These provisions seem to us sound and desirable." (1 Hearings 103)

The prepared statement of the United States Chamber of Commerce, read at the Senate hearings on the Kennedy bill, characterized the proposed amendment in the following language:

> "There are some provisions in section 112 that the chamber favors. Among them are the provisions closing present loopholes in section 302(a) by expanding the prohibitions of this subsection to labor relations consultants or to indirect bribes to labor officials or organizations in the form of loans." (Hearings before the Senate Subcommittee on Labor on S. 505, etc., 86th Con., 1st Sess., 230; see also Statement of Joseph Beirne, President, Communications Workers of America, AFL-CIO, *id.* at 802)

During the course of the debates on the bill on the floor of the Senate, Senator Goldwater stated:

> "Section 211 amends numerous provisions of Section 302 of the Taft-Hartley Act, which was originally designed to outlaw certain types of payments made by employers to labor unions or their agents, payments which are generally suspect as attempts to corrupt or wrongfully influence union leaders.
>
> "Section 302 as it presently reads, prohibits any such payment or delivery of money or other thing of value. *This section adds a prohibition on any loan as well.*" (105 Cong. Rec. 9112; emphasis supplied)

The reports on the amendatory legislation of both the House and Senate Labor Committees are in accord that a purpose of the amended legislation was to close the existing loophole. The Senate Report states:

> "Although these provisions of existing law would punish most forms of bribery or extortion if they were vigorously enforced by prosecuting officers the testimony before the McClellan Committee revealed loopholes which both employer representatives and union officials turned to advantage at the expense of employees. The Committee bill proposes to close the *loophole*. The provisions dealing with management abuses are discussed below." (Sen. Rep. No. 187, 86th Cong., 1st Sess., p. 13; emphasis supplied)

The House Report (No. 741, 86th Cong., 1st Sess.) contains at page 43 the following description of the proposed amendment:

> "Under existing law it is illegal for an employer to pay or deliver anything of value to a representative of his employees, except in those instances permitted by subsection (c) of Section 302. The purpose of these amendments to Section 302 is to forbid any payment, loan, or bribe by an employer, employer association, or anyone acting on an employer's behalf, i. e., labor relations consultant. The demand or acceptance of such payment, loan, or bribe is also proscribed."

The view that the addition of the words "lend" and "loan" to Section 302 substantively changed the statute so as to add a proscription where none existed before has been succinctly expressed in *Aaron, The Labor Management Reporting and Disclosure Act of 1959,* 73 Harv. L. Rev. 851, 892 (1960)

> "It adds loans and agreements to lend to the types of payments already prohibited. It also adds the following to the list of recipients who may not receive such payments or loans * * *"

Mr. Aaron further observes, at pages 892-3:

> "The amended law will outlaw bona fide loans, openly made, by some employers to their employees. This is unfortunate, but scarcely a weighty argument against commendable objectives of the amendment."

Thus, it is evident from the Congressional proceedings that Congress did not believe that Section 302 covered loans and felt it necessary to amend the statute to close the loophole.

Precisely applicable, therefore, is the recent decision of *Fischer Flouring Mills Co.* v. *United States,* 270 F. 2d 27 (C. A. 9, 1959), holding:

> "It is hornbook law that, where Congress has amended a statute to cover a 'loophole' the fact that an addition has been required is proof that the prior statute should be given a different construction."

In Point 3, of the Jurisdictional Statement (pp. 8 through 11), appellant contends that the purpose of the amendment of Section 302 was to extend its prohibitions to "middlemen," and that the addition of the words "lend" and "loan" was merely intended to clarify what was already implicit in the existing language of the statute. Not only is this refuted by the legislative history of the amend-

ment, as above set forth, but also by the plain language of the amendment itself.

The Labor Management Reporting and Disclosure Act of 1959, the comprehensive statute which contains the amendment to Section 302 as Section 505 thereof, opens with a "Declaration of Findings, Purposes and Policy." Subdivision (b) of Section 2 of that Declaration reads:

> "(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require *further and supplementary legislation* that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives." (Emphasis supplied.)

Thus Congress itself, in the very statute here involved, described the amendment as imposing further and supplementary prohibitions, applicable to "employers" as well as "middlemen".

While quoting from the Senate Committee Report of the Eighty-Fifth Congress, the appellant (p. 9) completely omits all mention of the far clearer Senate Report of the Eighty-Sixth Congress, which actually enacted the amendment (*supra*). Moreover, nothing even in the earlier Report indicates in any way that the added word "lend" is any less novel than the added phrase "labor relations expert, adviser or consultant to an employer," which the appellant concedes was a substantive addition.

Indeed, the latter phrase could more readily be construed as within the meaning of the term "employer" than can "lend" be construed as "pay or deliver." This is particularly true since the word "employer" has been held

to include "any person acting as an agent of an employer, directly or indirectly" (*United States* v. *Lavery*, 161 F. Supp. 283, 286, W. D. Pa., 1958; *United States* v. *Ryan*, 128 F. Supp. 128, 131, S. D. N. Y., 1955).

Even the most casual comparison of the original Section 302(a) with the amendment shows that the latter, far from being a clarification, represented a most substantial enlargement and innovation. Thus, the title of the original section was merely "Restrictions on payments to employee representatives * * *." In contrast, the title of the amended Section 302 is "Restrictions on payments *and loans* to employee representatives, labor organizations, officers and employees of labor organizations, and to employees or groups or committees of employees * * *" (emphasis supplied).

Congress recognized that a loan, like a payment to a union agent who is technically not a "representative," was outside the proscription of Section 302(a) and brought it within the ambit of the statute by the 1959 amendment. The fact that loans were not added to that section for twelve years, during which Congress was continually in session, is in itself persuasive evidence that the addition was not a mere clarification.

This Court has consistently held that where a statute, and particularly a criminal statute, is amended so as to include an additional specification of the crime, the amendment is in effect a legislative declaration that the new specification was not theretofore unlawful.

In *United States* v. *Chase*, 135 U. S. 255, the defendant had been indicted for mailing an indecent letter under a statute which proscribed the mailing of a "book, pamphlet, picture, paper, writing, print or other publication of an indecent character." After the indictment was filed, the statute was amended to add "letters" to the list of pro-

hibited matter. The United States contended that the term "writing" included letters. The Supreme Court, in ruling that the statute had not been violated, stated:

> "If letters were embraced in the Statute on which this indictment was founded, why did Congress consider it necessary to insert the specific word to designate them in 1888? It must be that body did not put the construction on the prior Statute claimed in behalf of the United States, else we have it doing a useless and vain act." (p. 262)

Similarly, in *Viereck* v. *United States,* 318 U. S. 236, a statute requiring the disclosure of propagandists' activities for foreign governments was amended after the acts for which defendant was indicted had occurred, so as to proscribe the type of acts for which Viereck was indicted. The Court stated at page 247:

> "While we find in the Committee reports no mention of the explicit restriction of the application of § 3(c) of the old Act to the registrant's activities 'as Agent', the reports reveal a clear purpose to make the registration requirements of the new Act extend to all his activities. We think that in this respect the new Act extends beyond the old and that the application, *ex post facto,* of the new, to impose on petitioner a duty which the words of the old plainly exclude, is not to be justified by denominating the amendment as clarifying or declaratory legislation."

Among the many other decisions to the same effect, see *United States* v. *Curtis,* 107 U. S. 671 (1883).

CONCLUSION

It is respectfully submitted that appellant has presented no substantial question for the decision of this Court, and that the judgment of the District Court should be affirmed.

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